IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9184 of 2005
With
SPECIAL CIVIL APPLICATION No. 9186 of 2005
To
SPECIAL CIVIL APPLICATION No. 9190 of 2005
With
SPECIAL CIVIL APPLICATION No. 9644 of 2005
To
SPECIAL CIVIL APPLICATION No. 9647 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? - **Yes.**

2 To be referred to the Reporter or not ? - **Yes.**

3 Whether their Lordships wish to see the fair copy of the judgment ? - **No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? - **No.**

5 Whether it is to be circulated to the civil judge ? - **No.**

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VINAY N PANDYA - Petitioner(s)

Versus

UNION OF INDIA & 15 - Respondent(s)

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Appearance :

MR GIRISH PATEL WITH MR AJ YAGNIK for Petitioner(s) : 1,
RULE NOT RECD BACK for Respondent(s) : 1,
RULE UNSERVED for Respondent(s) : 1, 9, 15,
MR JITENDRA MALKAN for Respondent(s) : 1
MR K V SHELAT FOR Respondent no. 2

MR ARUN D. OZA -GOVERNMENT PLEADER for Respondent(s) : 3 - 4.
MR PRANAV G DESAI for Respondent(s) : 5,
RULE SERVED BY DS for Respondent(s) : 6, 7, 8,10 - 13, 14, 16.
MR K M THAKAR WITH MR KUNAN B NAIK for Respondent(s) : 6,
KEDAR B BINIWALE for Respondent(s) : 7,
MR NILESH P SHAH for Respondent(s) : 7,
MR PRABHAV A MEHTA for Respondent(s) : 14,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date :4/10/2005

CAV JUDGMENT

1. Vinay N.Pandya, Secretary of New Era Senior Secondary School Parents' Association and others, petitioners have filed this petition under Article 226 and 227 of the Constitution of India for a writ of mandamus, writ in nature of mandamus, directing the respondent no.1, the Union of India, Ministry of Human Resource Development and Central Board of secondary Education to constitute a regulatory authority or body consisting of experts in the field of education, accountancy and related fields and frame regulatory measures to check commercialization of education, profiteering by Private Unaided Self-finance Educational Institutions running Schools from K.G. To Standard-12 all over India.

1.1 Petitioners further prayed that existing fee structure and steep hike in the fee for the academic year 2005-2006 by the New Era Senior Secondary School and Balwadi, respondent no.6, (hereinafter referred to

as 'School') and The Gujarat New Era Education Trust, respondent no.7 (referred to as 'Trust') amounts to profiteering, imposition of capitation fee and commercialization of education and therefore, in violation of law laid down by the Hon'ble the Supreme Court of India in the matter of TMA Pie Foundation and others v. State of Karnataka and others reported in (2002) 8 SCC 481, Islamic Academy of Education v. State of Karnataka reported in (2003) 6 SCC 697 and Modern School v. Union of India reported in (2004) 5 SCC 583 and arbitrary irrational, discriminatory, disproportionate, unfair, unjust, unreasonable, violative of conditions of lease deed executed between respondent nos.6 and 7 and respondent Municipal Corporation of Vadodara, violative of trust objectives stated in the approved scheme in view of Bombay Public Trust Act, 1950 and therefore, violative of Article 14, 19 and 21 of the Constitution of India. Petitioners prayed for further prayers in this behalf.

2.The facts giving rise to this petition are as under:

2.1 Petitioners are parents and representative of parents of students of School and Balwadi, which is run

by respondent no.7, registered Charitable Trust engaged in the field of education. The Respondent School is a Private Unaided Self-finance School imparting education to students from K.G to Standard-12.

2.2 As stated above, the Municipal Corporation of Vadodara has given on lease to the respondent trust a piece of land admeasuring about 11460 sq. meters in T.P.Scheme No.123, Nizampura at Vadodara bearing Final Plot NO.430. A resolution to this effect was passed in the year 1978 and Lease Deed was executed between the respondent Corporation and the respondent trust on 4/12/1985. Condition No.11 in the Lease Deed categorically states that after the construction of the school is over, the trust shall not demand any building fund or fund for any other purpose by donation or otherwise. If it is found out that the trust is demanding such fund, then the Lease Deed shall be cancelled and the possession of the land will be taken back. And no amount of compensation or damage in any nature will be paid to the trust. The petitioners state that the amount of lease to be paid by the respondent trust as stated in the lease deed is Rs.1240/- per year.

3. It is the case of the petitioners in the petition that for the academic year 2003-2004, the fee charged by the school was Rs.10,740/- per year. For the academic year, 2004-2005, the same was increased to Rs.13,220/- i.e. 23% and in the present academic year the fee has been hiked to 20,370/- i.e 54%. Thus, it is a contention of the petitioners that in last two years the total rise in the fee is Rs.9,630/- and as compared to the previous academic year the rise in the fee is Rs.7,150/-.

4. It is the case of the petitioners that in the name of development and other nomenclature, the school, respondent no.6 and trust, respondent no.7 have continued to impose fees on the students which is directly in contravention of the lease deed which has been referred earlier. In the present academic year, development fund of Rs.5,000/- has been imposed on every student. Looking to the number of students, more than 1250, studying in the respondent School the amount sought to be collected is Rs.62,50,000/- (Sixty two lakhs fifty thousand only). This is in the backdrop of the fact that the respondent Trust has reserved fund of

Rs.5 crores with them and every year income from the interest on securities and otherwise is more than Rs.18 lakhs.

5.It is the case of the petitioners that respondent no.6 and 7 have indulged into profiteering and imposition of capitation fee. This is nothing but commercialization of education by a Charitable Trust like respondent no.7. In the trust deed, one of the objectives of the respondent Trust is to serve every economic class and social strata of the society by imparting education amongst the students.

6.It is the case of the petitioners that the respondent no.6 School imparts education to the students of K.G. To Standard-12. It is recognized by affiliating to Respondent Central Board of Secondary Education (hereinafter referred to as 'Board'), as the school is private unaided self-finance educational institute.

7.The petitioner Association comprises of parents of more than 700 students of the school. The main purpose of forming Association is to collectively represent grievances of the member parents against the school

management and the trust which runs the school.

8. It is the case of the petitioners that petitioner nos.2, 3, 4, 5 and 6 are parents of respective students who are taking education in the respondent school.

9. In the petition, it was stated that respondent no.1 is Union of India, Ministry of Human Resources Development represented by its Secretary. This Ministry looks after the field of education in the entire country, as it is known. It also supervises, being the supreme authority, the respondent Central Board of Secondary Education. Respondent No.2 is a Central Board of Secondary Education which is an independent and autonomous Board which has given reorganization to and to whom the respondent school is affiliated. It is stated that respondent no.2 is a 'State' being the agency or instrumentality of the State as defined in Article 12 of the Constitution of India.

10. Respondent No.3 is a State of Gujarat represented by its respective Secretary representing Department of Education. Respondent no.4 is a Joint Charity Commissioner and a statutory authority under the Bombay

Public Trust Act, 1950. Respondent No.7 is registered in the office of respondent no.4, the Joint Charity Commissioner. It is the statutory responsibility of respondent no.4 to see that respondent no.7 Charitable Trust engaged in the charitable activities of education acts in accordance with the Bombay Public Trust Act, 1950 and the trust approved Trust Deed stating the objective of the trust as well.

11.The petitioners state that the respondent trust owns the respective no.6 school that was established and set up on the land given on lease to it by the respondent Municipal Corporation of Vadodara. The respondent no.6 School has been established for last more than 15 years. It is recognized by and affiliated to the respondent Central Board of Secondary Education. It imparts education in English to more than 1250 students from K.G. To Standard-12. Thus, respondent nos. 6 and 7 do not depend at all on Government aid to conduct the classes in the school and the school is being run exclusively from the tuition fees and other charges paid by the students from time to time and as and when demanded by the respondent School Management.

12.It is the case of the petitioners that respondent no.6, Private Unaided Educational Institution, enjoys greater autonomy in the matter of administration and considerable freedom in evolving fee structure. In other words, the respondent nos.6 and 7 do not have rigid fee structure and are not under control, supervision and administration of the State as much as private aided educational institutions are concerned. However, what is abundantly prohibited for such self-finance institution is: (a) Profiteering, (b) Capitation fee, (c) Commercialization of education, (d) acting against the public and national interest. In other words, right to establish and administer a private educational institution is a fundamental right, as the education now is accepted as an occupation, guaranteed in Article 19(1)(g) of the Constitution of India and same is subject to reasonable instructions envisaged in Article 19(2) of the Constitution of India.

13.The Petitioners state that the respondent school management has its own fee structure based on their own rationals and reasons to which parents are not aware about. Every year the respondent school management

keeps on increasing fee which includes tuition fees and other fees without giving any reason whatsoever. Every year there is a substantial hike in the fee under one or other heads. The respondent school management being private institution, though engaged in charitable activity of education, leaves no choice for the parents in this respect. Every year, so far, the parents have paid fee though the hike was not at all acceptable to them and the same has been extremely burdensome.

14. It is the case of the petitioners that imposition of hike in the fee by the respondent school management is always unilateral and without any effective, meaningful and wider consultative process. In other words, the parents are not actually and effectively taken into confidence by the respondent school management before any such steps are taken. Therefore, there has always been lack of transparency and mutual trust in this regard.

15. Petitioners state that the academic year 2004-2005 came to an end on 12/3/2005. On 11/3/2005 took place a cursory meeting of so-called Parent Teachers Association, which always plays to the tune of the

respondent School Management. 4-5 parents chosen by the respondent School Management remained present in the same. Among other issues, a decision of the respondent School Management to hike fee was ratified. However, the minutes of the meeting does only mentions fee hike and does not state the amount. The reasons given for hike in the fee are as under:

i. Introduction of Science Park

ii Use of technology in terms of upgradation of computers and increasing the number of existing computers.

iii Number of labs to be increased for teaching, learning process and as resource place.

iv. Maintaining quality staff.

16. Comparative statement regarding fees of various schools is alleged to have been placed in th meeting. However, the question remains whether comparative hike in the fee by the other schools have been placed on record or not and whether their respective balance

sheets suggest that they are indulging in profiteering and/or imposing capitation fee.

17.It was further stated by the petitioners that the school uniform of the respondent no.6 school is distinct and cannot be used if a student is transferred to any other school in the middle of the term. In all, the books, stationary as well as school uniform has cost around Rs.2,000/- per student.

18.The hike of fees in school from year to year which I have stated earlier is purely based on whims and caprices of the respondent school management without there being any rhyme or reason. Petitioner further submits that in comparison to the academic year 2003-2004 , the respondent school management has hiked fee of almost Rs.10,000/- in the present academic year 2005-2006. If the hike in the fee is viewed from the perspective of different heads, then the picture that generates from same from same is as under:

(1) Tuition fee is hiked from Rs.440/-; to Rs.780/- for one quarter of period. For a whole year it comes to Rs.3,120/-.

(2) Lunch fee is hiked form Rs.250/- to Rs.350/- for oner quarter of period. For a whole year it comes to Rs.1,400/-. The students are offered the junk food.

(3) Medical fee is hiked from Rs.60/- to Rs.120/- for one year. Whereas medical checkup has not taken place even once in the last two years.

(4) Parents Teachers Association fee now being collected is Rs.40/- per student for holding couple of such meetings having so-called representative of parents.

In view of the same, petitioners state that numerically if one counts the hike in the fee, it is under:

(1) Hike in the total fee in last two years is Rs.9,630/- per student. The total fee collected from approximately 1250 students x Rs.9,630/- comes to Rs.1,20,37,500/-.

(2) Hike in the fee in the last one year is Rs.7,150/-. The total fee collected from approximately 1250

students x Rs.7,150/- comes to Rs.89,37,500/-.

19.The Petitioners submit that out of these fees, as on 31/3/2004, the amount of land fund is Rs.92,54,000/- where as the land of the respondent school has been allotted by the respondent corporation on a yearly rent of Rs.1,240/-.

20.The income only from the amount of interest per year is around Rs.18 lakhs. This means that considering the interest rate of 7.5%, the respondent Trust has reserve fund of more than Rs.3 crores.

21.The details of regular rise in the total fund is as under:

a. As on 31/3/2002 - Rs.4,45,79,743.76

b. As on 31/3/2003 - Rs.4,84,68,520.89

c. As on 31/3/2004 - Rs.5,36,73,822.34

Meaning thereby that the surplus amount increases at the rate of Rs.40 lakhs per year.

22.The lunch fee collected from the students of the Balwadi of the respondent School for the year 2002-2003

was Rs.6,47,400/-. Whereas the actual expenses towards the lunch for the Balwadi students was only Rs.2,27,361/-. Meaning thereby that only in the year 2002-2003, the profit made out of lunch fee only for the Balwadi students was more than Rs.4 lakhs.

23.It has been further stated that in the audited reports that the respondent trust has income of Rs.7500 by way of rent of the land that is allotted to it by the respondent Corporation on lease. The respondent trust pays Rs.1240/- as an annual rent to respondent Corporation as per the lease deed. To whom the land in question is given by way of subletting or otherwise is not known. But this is a serious issue.

24.It may be further stated that from the present academic year of 2005-2006, the respondent school management has imposed additional fee under head of development fee of Rs.5,000/- per year per student. It is also submitted that why there is a need of collecting development fee of this much amount from every student is not known. If this amount is collected from all the students that will come to rs.62,50,000/- (Sixty two lakhs fifty thousand only).

25.It is the case of the petitioners that the respondent nos.6 and 7 cannot impose such development fee on the students, particularly in view of the lease condition no.11 created between the corporation and respondent nos. 6 and 7. Therefore, the same is absolutely unwarranted and unjustified and in direct violation of lease condition having adverse consequence not only on the respondent school management, but on students as well.

26.It is the case of the petitioners that the fee structure of the respondent school is to be evolved on the basis of rational, logical and appealable process. By such evolving process, the amount of fee is arrived at on the basis of actual expenses, expenditure besides future expenses and expenditure upto reasonable extent. Besides, there are other tangible factors, which are to be kept in mind while arriving at a figure of total fee, which is an end product of a cumulative causation. The infrastructure and facilities available, investment made, salaries paid to the teachers and staff, future plans for expansion and betterment of institution are the factors which ultimately may decide the fee

structure.

27.It is the case of the petitioners that if the audited reports and other documents available on record of the respondent nos.6 and 7 are looked into, it becomes very clear that the fee structure of the respondent school management and the hike in the same have no logical, rational and causative relationship with the actual expenses of an accounting year as well as capital expenditure incurred by the respondent nos.6 and 7. Though there is a reasonable surplus available with the respondent nos.6 and 7 with which all the future expenditure, betterment and upgradation can be made with, they keep on hiking fee every year regardless of consequences. The hike as stated hereinabove have no rational relationship with the expenses as well as expenditure.

28.Mr.Girish Patel, learned senior counsel with Mr.A.J.Yagnik, learned advocate appears for the petitioners. For all these contentions of the fee, charged by school, the learned counsels have relied upon following aspects:

28.1 Petitioner stated that the preamble of the Constitution provides that “WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a [SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC] and to secure to all citizens: JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship; EQUALITY of status and of opportunity; and to promote among them all FRATERNITY assuring the dignity of the individual and the [unity and integrity of the Nation];.

28.2 Article 14 of the Constitution of India provides 'Equality of law' - the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

28.3 Article 19(1)(g) of the Constitution of India provides that all citizens shall have right to practice any profession, or to carry on any occupation, trade or business.

28.4 Article 21(A) of the Constitution of India provides Right to 'education'- The State shall provide free and compulsory education to all children of the

age of six to fourteen years in such a manner as the State may, by law, determine.

29.The learned Counsel submitted that in view of these constitutional provisions and in view of the judgments of the Hon'ble Supreme Court, right to education is fundamental right or is a occupation and therefore, students who are at the age from 6 to 14 have a fundamental right to education under Article 21A of the Constitution of India and also those students have also a right to education/right to occupation of education among all students and in support of the same, Mr.Girish R.Patel, learned advocate has relied upon following decisions of the Hon'ble Supreme Court.

(29.1) Mohini Jain v. State of Karnataka, reported in AIR 1992 SC 1858, particularly para 14 at page 1864, where the Hon'ble Supreme Court has held that “Right to education”, therefore, is concomitant to the fundamental rights enshrined under Part III of the Constitution.”

(29.2) Unni Krishnan, J.P. v. State of A.P., reported in AIR 1993 SC 2178, where the learned Counsel has

relied upon para 11 at page 2187 which reads as follows:

> “The fundamental purpose of Education is the same at all times and in all places. It is to transfigure the human personality into a pattern of perfection through a synthetic process of the development of the body, the enrichment of the mind, the sublimation of the emotions and the illumination of the spirit. Education is a preparation for a living and for life, ere and hereafter.”

(29.3) The learned Counsel, over and above relied upon para 55 at page 2200 which reads as follows:

> “Thus, it has to be concluded that the right to free education up to the age of 14 years is a fundamental right.”

(29.4) The learned counsel has also relied upon para 81 at page 2206 which reads as follows:

> “As a sequel to this, an important question arises: what is the nature of functions discharged by these

institutions? They discharge a public duty. If a student desires to acquire a degree, for example, in medicine, he will have to route through a medical college. These medical colleges are the instruments to attain the qualification. If, therefore, what is discharged by the educational institution, is a public duty that requires, to act fairly."

(29.5) The learned counsel has also relied upon para 83 at page 2208. He has also relied upon para 94 at page 2211 which reads as follows:

"It cannot be gainsaid that profiteering is an evil. If a public utility like electricity could be controlled, certainly, the professional colleges also require to be regulated."

(29.6) The learned counsel has also relied upon paras 105, 109, 142. He has also relied upon para 145 at page 2231 which reads as follows:

"The right to education which is implicit in the right to life and personal liberty guaranteed by Article 21 must be construed in the light of the

directive principles in Part IV of the Constitution.”

(29.7) The learned counsel has also relied upon para 146, 174 and 148 of the said judgment.

(29.8) The learned counsel has relied upon the judgment in the case of TMA Pai Foundation v. State of Karnataka, reported in 2002 8 SCC 481, (11 Judge Bench of the Supreme Court), particularly para 31 of the said judgment wherein the Hon'ble Supreme Court has held as under:

“Counsel for the institutions, as well as the Solicitor-General, submitted that the decision in Unni Krishnan case insofar as it had framed the scheme relating to the grant of admission and the fixing of the fee, was unreasonable and invalid. However, its conclusion that children below the age of 14 had a fundamental right to free education did not call for any interference.”

(29.9) The learned counsel has further relied upon para 45 of the said judgment where the Hon'ble Supreme Court

has observed as under:

"In view of the discussion hereinabove, we hold that the decision in Unni Krishnan case insofar as it framed the scheme relating to the grant of admission and the fixing of the fee, was not correct, and to that extent, the said decision and the consequent directions given to UGC, AICTE, the Medical Council of India, the Central and State Governments etc. are overruled." Thereafter the learned counsel has relied upon paras 47, 48, 49,50 and 57. In para 57 at page 545, the Hon'ble Supreme Court has observed that "We, however, wish to emphasize one point, and that is that inasmuch as the occupation of education is, in a sense, regarded as charitable, the Government can provide regulations that will ensure excellence in education, while forbidding the charging of capitation fee and profiteering by the institution. Since the object of setting up an educational institution is by definition "charitable", it is clear that an educational institution cannot charge such a fee as is not required for the purpose of fulfilling that object. To put it differently, in the establishment of an educational institution, the object should not be to make a profit,

inasmuch as education is essentially charitable in nature. There can, however, be a reasonable revenue surplus, which may be generated by the educational institution for the purpose of development of education and expansion of the institution.” He has also relied upon para 60 at page 546 in which the Hon'ble Supreme Court has held that “Education is taught at different levels, from primary to professional. It is , therefore, obvious that government regulations for all levels or types of educational institutions cannot be identical; so also, the extent of control or regulation could be greater vis-a-vis aided institutions.”

(29.10) The learned counsel has also relied to Question No.9 and its answer on page 590 of (2002) 8 SCC 590 which reads as under:

“Q.9. Whether the decision of this Court in Unni Krishnan, J.P. v. State of A.P. (except where it holds that primary education is a fundamental right) and the scheme framed thereunder require reconsideration/modification and if yes, what?

A. – The scheme framed by this Court in Unni Krishnan case and the direction to impose the same, except where

it holds that primary education is a fundamental right, is unconstitutional. However, the principle that there should not be capitation fee or profiteering is correct. Reasonable surplus to meet cost of expansion and augmentation of facilities does not, however, amount to profiteering."

(29.11) The learned Counsel further relied upon judgment in the case of Islamic Academy of Education and Another vs. State of Karnataka and others, reported in (2003) 6 SCC 697. He has relied upon para 7 at page 720 to para 147 onwards at page 772, then para 154, 155, 156 and 159. The Hon'ble Supreme Court in para 159 at page 775 observed as under:

> "With a view to ensure that an educational institution is kept within its bounds and does not indulge in profiteering or otherwise exploiting its students financially it will be open to the statutory authorities and in their absence by the State to constitute an appropriate body, till appropriate statutory regulations are made in that behalf."

(29.12) The learned counsel has also relied upon paras 160 and 161 at page 775, para 211 at page 787 and para 222 at page 789.

(29.13) The learned counsel has relied upon the judgment in the case of Modern School v. Union of India, reported in (2004) 5 Supreme Court Cases 583. Learned Counsel relied upon para 14 at page 599 which reads as under:

> “At the outset, before analyzing the provisions of the 1973 Act, we may state that it is now well settled by a catena of decisions of this Court that in the matter of determination of the fee structure unaided educational institutions exercise a great autonomy as they, like any other citizen carrying on an occupation, are entitled to a reasonable surplus for development of education and expansion of the institution. Such institutions, it has been held, have to plan their investment and expenditure so as to generate profit. <u>What is, however, prohibited is commercialization of education.</u> Hence, we have to strike a balance between autonomy of such institutions and measures to be taken to prevent

commercialization of education. However, in none of the earlier cases, this Court has defined the concept of reasonable surplus, profit, income and yield, which are the terms used in the various provisions of the 1973 Act.”

(29.14) The learned counsel has also relied upon paras 16, 17 and 23 of the said judgment.

30.The learned senior counsels have relied on the decision of Seven Judge Bench of the Hon'ble Supreme Court in the case of P.R.Inamdar and others v. State of Maharashtra and others, reported in AIR 2005 SCW 3923, where the Supreme Court has stated what is meant by “education” in paras 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, and 93 (from page 3960 to 3962) and also in para 136 at page 3978. In para 137 at page 3979, the Hon'ble Supreme Court has held as follows:

“Capitation fee cannot be permitted to be charged and no seat can be permitted to be appropriated by payment of capitation fee. 'Profession' has to be distinguished from 'business' or a mere 'occupation'. While in business, and to a certain

extent in occupation, there is a profit motive, profession is primarily a service to society wherein earning is secondary or incidental. A student who gets a professional degree by payment of capitation fee, once qualified as a professional, is likely to aim more at earning rather than serving and that becomes a bane to the society. The charging of capitation fee by unaided minority and non-minority institutions for professional courses is just not permissible. Similarly, profiteering is also not permissible. Despite the legal position, this Court cannot shut its eyes to the hard realities of commercialization of education and evil practices being adopted by many institutions to earn large amounts for their private or selfish ends. If capitation fee and profiteering is to be checked, the method of admission has to be regulated so that the admissions are based on merit and transparency and the students are not exploited. It is permissible to regulate admission and fee structure for achieving the purpose just stated."

31. Mr.Girish Patel, learned senior counsel has submitted that the school is running a primary school as well as

secondary school. Article 21 (A) provides a fundamental right to the students upto 14 years. In view of the same, the learned counsel has referred to the provisions of Bombay Primary Education Act, 1947 particularly Section 2(2)-“Approved school” means a primary school maintained by the State Government or by a school board or by an authorized municipality [and includes a private primary school recognized under section 40A], Section 2(7)-”Child” means a boy or girl whose age is not less than six and not more than fourteen years at the beginning of the school board may, with the sanction of the Director, fix, Section 2(15) “Primary Education” means education in such subjects and upto such standards, as may be determined by the State Government from time to time and Section 18(A) provides private primary school which means the school not maintained by the State Government or by the Central Board or by authorized municipality. He has referred to Section 40A which provides prohibition against imparting primary education by private primary schools without recognition. So, under the Act, school has to obtain recognition before imparting education. The learned counsel has also referred to Rule 106(A) of the Rules, particularly Rule 106(A)(v), reads as under:

(31.1) Rule 106(A)(v) ”The rates of tuition fees, the pay scales and allowances of the teaching staff shall be such as may be approved by the Government from time to time.”

32.The learned counsel has thereafter referred to the affiliation bylaws of Central Board of Secondary Education particularly bylaw 11 - which provides for “Fees” at page 442, reads as under:

(32.1) By-law 11: “Fees charges should be commensurate with the facilities provided by the institution. Fees should normally be charged under the heads prescribed by the Department of Education of the State/U.T. For schools of different categories. No capitation fee or voluntary donations for gaining admission in the school or for any other purpose should be charged/collected in the name of the school in case of such malpractices, the Board may take drastic action leading to disaffiliation of the school.”

(32.2) The learned counsel has also relied upon other provisions of other bylaws namely bylaw-4-”Last date of

submission of applications of applicants, bylaw-5-”Society/Trust running the school”, bylaw-6-”school Management Committee”, bylaw-7-”Financial Resources”, bylaw-8-”physical facilities”, bylaw-9-”liberty”, bylaw-10-”Staff and Service Conditions”, bylaw-11-”fees“, bylaw-12-”Admission of students”, bylaw-13-”Miscellaneous” and bylaw-11-”Board's examination”, “penalty”, bylaw-14-”Reserve Fund”, bylaw-20-”School Managing Committee, its Constitution, Powers and Functions”. On the basis of the same, it was submitted that after primary education over, the Central Board has a control on the school regarding fees to all students.

Contentions of the Respondents:

33.On behalf of the central Board of School, Mr.K.V.Shelat, learned advocate appears and he has relied upon affidavit in reply filed by one S.V.Sorte filed in July 2005. In the said affidavit, he submitted that the CBSC is an autonomous organization under the union ministry of Human Resource Development of Government of India and is registered under Societies Registration Act, 1860. The Board gives

affiliation of Secondary Education covering Standard 8 to 12 (VIII to XII)to various institutions subject to Central Board Secondary Education affiliation bylaws which is binding to schools concerned. It was further submitted that the hike in the fee for academic year 2005-2006 amounts to excessive profiteering and commercialization of education etc., or not, in view of the decision of the Apex Court in Modern School V/s. Union of India 2004 (5) SCC 583 can be decided by an expert committee which may be appointed by the Hon'ble High Court. He has also relied upon bylaws 11 as well as other bylaws in this behalf. It was stated that school authorities have been warned and put to notice by the communication dated 29/4/2005 about the arbitrary hike in the tuition fees etc. He has relied upon the Division Bench Judgment of Rajasthan High Court dated 25/2/2004 passed in the case of Prahlad Sharma v. State of Rajasthan and others. The Division Bench of Rajasthan has constituted a committee under the following circumstances.:

> “In the circumstances, therefore we are of the view that a committee headed by former high court judge should examine all aspects relating to the fixation

of fees by the school. Accordingly we appoint the committee consisting of following members:

Rtd. Justice Mr.Tiwari,

Secretary Education Department (Govt.of Rajasthan)

Former Vice Chancellor of Chairman, Dayanandswami University, Ajmer

The Committee shall give reports within a period of three months. It will be open to the committee to give opportunity of hearing to the parents-students associations and the representatives of the management of the schools.

The Committee shall also look into the questions relating to processing fee and other amounts being charged by the schools on account uniforms, books and stationery etc.

With the aforesaid observations and directions, the writ petitions are disposed of.

The matter be listed for the purpose of receiving of

the report of the committee on 27/5/2004.”

34.On behalf of the State of Gujarat, Mr.Arun Oza, learned Government Pleader appears. He has relied upon affidavit of Mr.A.T.Chaudhari, Deputy Secretary, Department of Education has filed an affidavit-in-reply on 11/8/2005. He has stated that Section 40-A of the Bombay Primary Education Act, 1947 provides prohibition against imparting primary education by private primary schools without recognition. He has also relied upon similar provisions of Bombay Primary Eduction Act namely provision of approved school, provision of primary education act, Section 18(A), 40(A) and also Rule 106-A, which I have referred in the course of argument of Mr.Patel because he has also invited the attention of this Court to this aspect. Mr.Arun Oza, learned Government Pleader has also reiterated and submitted that in view of these provisions also it is the duty upon the respondent school to consider these provisions and impart education in light of these provisions.

34.1 It is their contention that respondent no.7 has not sought, till date, approval of the rates of the

tuition fees from the competent authority charged so far by it to the students. Therefore, the imposition of the rates of tuition fees and revision introduced therein for the year 2005-2006 is against the rule of recognition and same is therefore illegal.

34.2 The learned Government Pleader has stated that Gujarat Secondary Education Act, 1972 and Secondary Education Regulations, 1974 are also applicable to the unaided private secondary schools. He has also stated that Section 31 of the Gujarat Secondary Education Act, 1972 also provides prohibition against imparting of secondary education without registration. Section 31(1) of the said Act states that no person shall impart secondary education through a school unless such school is registered under the provisions of this Act. Regulation 9 of the Secondary Education, 1974 provides procedure for registration of Secondary Schools by the Board. Sub-clause-VIII of Clause-7 of Regulation 9 of the Regulations provides that no Secondary School shall be registered by the Board or continued to be registered unless the rates of education fees, the pay-scale and allowance of the headmaster and teaching and non-teaching staff and

amenities provided are in accordance with the Regulations. It was stated that Central Board of Secondary Education, Delhi, the State Government has power to inspect Primary and Secondary Schools and to regulate the fees structure in the interest of the students. He also reiterated and relied upon the judgment of the Hon'ble Supreme Court which I have referred earlier and emphasis that the respondent no.6, school cannot commercialize the education in charging the fees in this behalf. The school can have reasonable written which in guise of charging, it cannot charge exorbitant fees in this behalf. He has also relied upon by-law 11 of the Central Board of Secondary Education which I have referred in the arguments of Mr.Shelat, learned Advocate.

35.On behalf of respondent nos.6 and 7, several affidavits have been filed, containing denial of the said contentions in this behalf.

35.A. On behalf of Union of India, Mr.Malkan, learned senior advocate appears. It is no doubt true that the Union of India has not filed affidavit but learned senior counsel stated that he also relies upon the

judgment of the Hon'ble Supreme Court which Mr.Patel, learned advocate has cited and Article 21 (A) being a fundamental right and other judgments of the Hon'ble Supreme Court. The principle is clear that the school can have reasonable return, but there cannot be a commercialization of education. He has also reiterated the arguments stated by Mr.K.V.Shelat, learned counsel for the Central Board and the Regulations relied upon by him in this behalf. He has also stated that he also relies upon the arguments of Mr.Arun Oza, learned Government Pleader particularly provisions of Primary Education Act and also Provisions of Secondary Education Act and he has also submitted that if the Court give direction to the Central Board Education to constitute committee, the Union of India extend fullest cooperation to the same.

36.In view of the order which I am passing, I do not want to discuss more about the affidavits filed by respondent nos.6 and 7 in this behalf. On the part of respondent nos.6 and 7, to whom the school belongs, the petition is vehemently opposed, refusing all the averments, allegations and submissions as under:

(a) That the petition is not maintainable against private unaided school run by a public trust.

(b) That the School and the Trust have not indulged in any commercialization, profiteering or collection of capitation fee.

(c) That the present fee structure and the revision introduced therein for the year 2005-2006 does not violate said judgments of the Supreme Court, if at all they are applicable. And that the School has complete autonomy to have its own fee structure.

(d) That the fees are commensurate with the infrastructure, facilities and amenities provided and to meet with reasonable expenditure being incurred by the School towards meeting annual and capital expenditure.

(e) That the School has not violated affiliation bye-laws of CBSC in any manner. That the Parents Teachers Associations has approved the revision in the fee before same was introduced for the present academic year.

(f) That the provisions of Bombay Primary Education Act and Rules thereunder are not applicable to the respondent School being affiliated to the CBSC.

37.It may be noted that one of the trustees, respondent no.14, has also filed an affidavit-in-reply opposing the contention of the respondent nos.6 and 7. Though the Union of India has not filed affidavit-in-reply Mr.Malkan, learned advocate has submitted that various decisions of the Hon'ble Supreme Court, shows that fees are to be fixed by the authority after considering all these facts. The learned counsel supports the State Government and Secondary Board also in this behalf.

Conclusion and findings:

38.What is education? -

38.1 “Education is a primary need of every human being and Literacy an indispensable tool for this purpose. We have to recognize that the aspirations and hopes of the peoples of our countries depend on the provision of appropriate systems of education. The great problems of poverty, ignorance and disease, can be addressed effectively only if we succeed in our programmes for education and literacy. An ancient Chinese saying comes to mind:

“If you are thinking of one year, plant rice,

If you are thinking of a decade, plant plant trees,
If you are thinking of a century, educate the people."

38.2 "Today in many countries the right to education is a fundamental right. The issue thereof is how to provide education to all. A UNESCO Document of 1972 bearing the title 'Learning To Be' had mentioned:

> "If we admit that education is and will be more and more a primordial need for each individual, then not only must we develop, enrich and multiply the school and the university, we must also transcend it by broadening the educational function to the dimensions of society as a whole."

38.3 While education continues to be concerned essentially with individual development, it approach to this fundamental task is now conditioned by societal concerns which have acquired a new importance. Social relevance can be established only through an iterative and interactive process between society and educational institutions. In this fast changing world, dynamism and innovation are fundamental to progress. We should be prepared to think far ahead to ensure that the

educational system continuously respondents to the true needs of a society that is evolving, so that it can serve the objectives of human advancement, progress, prosperity and happiness. Social scientists and economists now fully acknowledge the strong impact of education on development sectors like health, nutrition, and child-care.”- Re- Book -Dharma – A Legal Discipline by Dr.Shankardayal Sharma in its Article – Holistic Approach to Education for All. (Re.-INAUGURAL SPPECH DR.SHANKAR DAYAL SHARMA AT THE “EDUCATION FOR ALL” SUMMIT AT VIGYAN BHAVAN, NEW DELHI ON THURSDAY, 16 DECEMBER 1993/25 AGRAHAYANA 1915 (SAKA)).

38.4 Right to education - It is universally accepted that education empowers that people for full development of human personality, strengthens the respect for human rights, and helps to overcome exploitations and the traditional inequalities of caste, class and gender. Learning liberates from ignorance, superstition, and prejudice that blind the vision of truth. (Citing from Sanskrit text, per Mohan, J. in J.P.Unnikrishnan v State of AP AIR 1993 Sc 2178) According to Dr.S.Radhakrishnan, the process of education is the slow conquering of darkness of faults

in our inward being. “To lead us from darkness to light, to free us from every kind of domination except that of reason, is the aim of education” (Report of the University Eduction Commission 1948 cited in TMA Pai Foundation v State of Karnataka (2002)4 LR 1; 2002(8) SCALE 1; AIR 2003 SC 355.) It is a preparation for living in a better way in future with an ability to participate successfully in the modern economy and society. (Brown v Board of Education 98 L Ed US 347 (1954); 98 L Ed 873; 347 US 483 (1954)). As viewed by B.N.KIRPAL, C.J. it is the single most powerful tool for the upliftment and progress of the society. (TMA Pai Foundation v State of Karnataka (2002)4 LR 1; 2002(8) SCALE 1 at 12.) Education is empowerment for socio-economic mobility, an instrument for reducing socio-economic inequalities, and an equipment to trigger growth and development. There has been a paradigm shift in this sphere: from education as a transcendental and metaphysical value to education as a market value, and from subsidized education to cost recovery system. The features such as commodification of education, private sector's dominance in higher education, and market-driven education flowing from world trade law stand juxtaposed to the fact that

largest pool of illiterates is in India and high dropouts of students even at primary level here is owing to economic reasons. The linkage of right to education to right to dignified life, equality, freedom and cultural and minority right has made it highly intricate and the extent of regulations relating to it from different perspectives, quite complex.- (Re – book of P.Ishwara Bhat – Fundamental Rights – A Study of Their Interrelationship, page 305.)

38.5 The learned author has thereafter considered the right to education with reference to part IV-Directive principle of state policy and Article 21 and 14 as well as right to education and rights under Article 19, 21, 26, 29 and 30 and also right to education and right to equality. After considering the same, the learned author has considered and summed up the decision at page 312 which is as under:

38.6 “In sum, the increased focus on the phenomenon of knowledge based work and its emergent socio-economic and cultural dimensions have put the knowledge dissemination process at the center of interactions of several rights and freedoms, making them more

meaningful and in turn reinforcing educational right."- (Re. – book of P.Ishwara Bhat, page 312.)

39. In the course of hearing, all the parties showed readiness and willingness to accept the proposal of the appointment of Committee by CBSC for examining the rival contention of the parties and to submit a report to the Board which thereafter will take final decision. They agreed that matter may be disposed of by consent order. The Court appreciated the constructive stand of all the parties.

40. This Court is of the view that the petitions raise very important questions regarding education and fees to be collected by the private unaided schools affiliated to the CBSC, for its decision. The Hon'ble Supreme Court has also laid down various factors for determining the question of fees by unaided private professional and other educational institutions, which I have also referred earlier. The Central Government also indicated various factors while appointing a Task Force for such Schools to assist the Government in determining as to what actually amounts to commercialization of education. They will also be very

helpful to the CBSC. Further it may be noted that till today, the task force committee has not submitted his report. In view of the aforesaid circumstances, the CBSC is hereby requested to appoint a High Level Committee consisting of man who is a good and eminent jurist with Educational backgrounds as the Chairman of such Committee. The Committee shall examine the grievances of the petitioners on the fee structure and revision introduced therein for the year 2005-2006 and other relevant issues in this respect. The Committee shall hear the representatives of the petitioners and respondents in person. The present set of petitions will be considered as written representations on the part of petitioners as well as respondents. All the parties are permitted to make further representations in time to the Committee to be constituted. Affidavit of Ms. Khorshed Dorabji w/o. Rusi Dorabji, on behalf of respondent no.14 is at page 427 of the main petition. When CBSC constitute a committee, CBSC may consider the order passed by the Division Bench of the Rajasthan High Court dated 28/2/2004 which is produced at page 449. The Committee will consider all averments in this behalf as well as various decisions which I have referred in my order with a view to see that the order

does not become burdensome. I have not quoted various paragraphs of the judgments which I have referred here. This Court hope and trust that the proposed committee will consider those paragraphs of the judgments of the Hon'ble Supreme Court while fixing the fees in this behalf and prepare a comprehensive report. The Committee will submit its report within a period of two months taking into account all the factors and considerations keeping in mind the law laid down by the Hon'ble Supreme Court in this regard and written and oral representations of the parties to the petition. The CBSC, on receiving the report from the Committee, will decide the issues of the fee structure and the revision therein introduced by respondent School and the Trust on the basis of such report within a period of one month thereafter. Copy of the report of such Committee and the decision of CBSC shall be submitted to the Registrar of the High Court of the Gujarat. The CBSC will also provide on its own copy of the report and its decision thereupon to all the parties to the dispute. The decision of the CBSC shall not be implemented for period of 15 days after communication of same to all the parties to the petition. In the meanwhile, the students and the parents shall continue

to pay old fee charged in the previous academic year 2004-2005 for the present academic year 2005-2006 in quarters. The respondent School and the Trust shall not collect, in any manner whatsoever, the revised fee including the development fee/fund from the students. However, the respondent School is free to take steps against the students who do not even pay old fee in quarters for the present academic year 2005-2006 in accordance with law and particularly as per the affiliation buy-law of the CBSC.

41. In this matter, I have referred to the provisions of Primary Education and also provisions of Central Board Regulations. Over and above I have also considered Article 21 A viz. fundamental right to education and also judgments in the case of Mohini Jain (supra) and in the case of Unni Krishnan (supra). It may be noted that in this judgments, I have referred to important paras of the judgments. However, with a view to see that the judgment may not be unnecessarily burdened, I have only referred certain paras which also deal with the right to education. I have also considered the judgments in the case of TMA Pai Foundation, Modern School and also in the case of P.R.Inamdar. In these

also, important paras I have quoted, but other paras I have referred. The committee will consider the same. I have also shortly stated what about the education, the committee will consider that aspect also in this behalf. I hope and trust that committee will consider the same in true letter and spirit with an idea that the educational institute is entitled to charge reasonable fees in future, but none the less in charging fees, there should not be a commercialization of education. This twin aspect will be considered by the committee and other principles laid down in this behalf. The committee will give report in two months from the commencement of working. It will be open for the committee to look after the parent-students association, representatives of management of school. The committee shall look into questions relating to the process fee being charged by the school on account of development fee, uniform fees, books and stationary etc.

42. This consent order is passed without prejudice to the rights and contentions of all the parties to the petition. Petition disposed of accordingly.

(K.M.MEHTA, J.)

After pronouncement of the judgment:

42.1 Mr.Thakar, learned advocate for the respondent nos.6 and 7 states that this Court has already passed an order on 12/5/2005 by which this Court has directed the students to pay the fees which was paid in the last academic year and as regards fees for the current year, it was directed that the respondent nos.6 and 7 will not take any steps and expel the students only on the ground that ex fees have not been paid. The said order was continued during the period in the petition and in fact even during the pendency of the petition, the respondent, school has made the grievance and this Court clarified that the students must pay the old fees in this behalf. This order was also passed on 21/7/2005 and directed the students who have not paid the fees to pay fees on or before 21/7/2005. Inspite of the order of the Court dated 21/7/2005, still some students have not paid the fees in both the schools.

42.2 Now the judgment is already finally pronounced. Till today, if the students have not paid fees, it will

be open for the school authority to take steps in accordance with law.

42.3 After the committee finalizes a report, the committee will communicate the said report to the school authority regarding fees of the present academic year and thereafter the school will inform the students accordingly and thereafter, it is obligatory on the students to pay the fees as fixed by the committee constituted by this Court.

42.4 The committee will submit the report within two months from the date of order. Copy of the order may be given to the advocate for the CBSC.

(K.M.MEHTA, J.)

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